IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:09-CV-298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
	§	
Defendant.	§	

ORDER

This Order addresses the Houston Walton Galleria's ("Walton") motion to intervene [640] and motion for relief from the receivership order [639]. The Court grants Walton's motion to intervene for the limited purpose of asserting its motion for relief from the receivership order. Further, for the reasons that follow, the Court grants Walton's motion for relief from the receivership order and permits it to pursue counterclaims in a state court action involving two Stanford entities.[1]

Walton's motion arises from a state court lawsuit involving Stanford-owned companies. In 2005, before this receivership began, Stanford Group Holdings, Inc. and Stanford Galleria Buildings, L.P. (the "Stanford entities") sued Walton in Texas state court for over $30 million in damages arising from a lease agreement. Walton wants to asserts counterclaims against the Stanford entities but is barred from doing so by this Court's

[1]The Court also grants Walton's motion to enlarge the page limit for its reply [764].

receivership order, which enjoins litigation against the Stanford entities and "acts to obtain possession of" receivership assets. Order Appointing Receiver [157] at 7. Walton asks the Court for relief from the litigation injunction so that it may pursue counterclaims against the Stanford entities in the state court action.

In determining whether to lift a litigation stay in a receivership action, many federal courts apply a test first articulated by the Ninth Circuit Court of Appeals.[2] The test directs courts to consider three factors:

> (1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed;
> (2) the time in the course of the receivership at which the motion for relief from the stay is made; and
> (3) the merit of the moving party's underlying claim.

S.E.C. v. Wencke (*Wencke II*), 742 F.2d 1230, 1231 (9th Cir. 1984) (citing *S.E.C. v. Wencke* (*Wencke I*), 622 F.2d 1363, 1364 (9th Cir. 1980)).

The Court recently considered these factors and declined to lift the litigation stay for investor lawsuits against the Stanford entities and former employees. *See generally* Order of Mar. 8, 2010 [1030]. The Court found that, as a general matter, the balance of the *Wencke* factors weighs against lifting the litigation stay at this time. In Walton's case, however, the balance tips in the other direction.

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[2] *See, e.g.*, *United States v. Acorn Tech. Fund*, 429 F.3d 438, 443 (3d Cir. 2005); *F.T.C. v. NHS Sys., Inc.*, 2009 WL 3072475, at *12 (E.D. Pa. 2009); *S.E.C. v. Madison Real Estate Group, LLC*, 647 F. Supp. 2d 1271, 1275 (D. Utah 2009); *United States v. Petters*, 2008 WL 5234527, at *3 (D. Minn. 2008); *S.E.C. v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008); *F.T.C. v. 3R Bancorp*, 2005 WL 497784, at *2 (N.D. Ill. 2005); *United States v. ESIC Capital, Inc.*, 685 F. Supp. 483, 485 (D. Md. 1988).

It is the first *Wencke* factor — impact on the receivership status quo weighed against potential prejudice to the moving party — that tips the scales in favor of allowing Walton to assert its counterclaims in the state court action. Walton would suffer substantial injury if not allowed to proceed with its counterclaims. First, Walton's counterclaims may be compulsory counterclaims pursuant to Texas Rule of Civil Procedure 97(a). If they are compulsory counterclaims and Walton does not assert them in the state court action, it may be barred from asserting them later when the Court lifts the litigation stay from the receivership order. Even if Walton is not barred from asserting its claims later, it will at a minimum be forced to litigate issues arising from the same contract twice. The Receiver argues that the Court should not allow Walton to proceed because the receivership status quo will be disrupted by allowing the counterclaims to go forward. But the Receiver and the Stanford entities have *chosen* to continue with the state court action (which began before the receivership). The Receiver has not demonstrated that adding counterclaims arising from the same transaction would substantially increase the receivership's expenses in litigating the state court action. Accordingly, any potential burden to the receivership cannot outweigh the substantial prejudice to Walton in not allowing it to fully defend itself.

Signed March 15, 2010.

David C. Godbey
United States District Judge